

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

GREGORY ZAGORSKI,)
Plaintiff,) C.A. No.:
v.)
BLUESTEM BRANDS, INC. D/B/A) COMPLAINT AND DEMAND FOR
FINGERHUT,) JURY TRIAL
Defendant.)

COMPLAINT

GREGORY ZAGORSKI (“Plaintiff”), by and through his attorneys, THE GILLISPIE LAW FIRM, P.C., alleges the following against BLUESTEM BRANDS, INC. D/B/A FINGERHUT (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. § 227, et. seq. ("TCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the State of Virginia and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

PARTIES

5. Plaintiff is a natural person residing in Bristol, Virginia 24201.

6. Plaintiff is a "person" as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a corporation with its principal place of business located at 7075 Flying Cloud Drive, Eden Prairie, Minnesota 55344.

8. Defendant is a “person” as that term is defined by 47 U.S.C. § 153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number that he has had for over a year.

11. Plaintiff has only used this number as a cellular telephone number.

12. Defendant called Plaintiff on his cellular telephone on a repetitive and

1 continuous basis.

2 13. When contacting Plaintiff on his cellular telephone, Defendant used an
3 automatic telephone dialing system and automatic and/or pre-recorded messages.
4

5 14. Plaintiff knew Defendant was calling him using an automatic
6 telephone dialing system and automatic and/or pre-recorded messages as he
7 received calls from Defendant that began with a delay or pause prior to a live
8 representative of Defendant coming on the line.
9

10 15. Defendant's telephone calls were not made for "emergency purposes."

11 16. Desiring to stop these repeated, unwanted calls, Plaintiff spoke to
12 Defendant soon after the calls began and revoked any previous consent that
13 Defendant had to contact him.
14

15 17. Once Defendant was aware that its calls were unwanted and was told
16 to stop calling, there was no lawful purpose to making further calls, nor was there
17 any good faith reason to place calls.
18

19 18. In spite of his repeated instruction to stop calling his cellular
20 telephone, Defendant instead continued to call him repeatedly.

21 19. Upon information and belief, Defendant conducts business in a
22 manner which violates the Telephone Consumer Protection Act.
23

COUNT I
DEFENDANT VIOLATED THE
TELEPHONE CONSUMER PROTECTION ACT

20. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

21. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone using an automated message and/or prerecorded voice.

22. Defendant initiated these automated calls to Plaintiff using an automatic telephone dialing system.

23. Defendant's calls to Plaintiff were not made for emergency purposes.

24. Defendant's calls to Plaintiff were made after Plaintiff had explicitly revoked any consent that was previously given.

25. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

26. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

27. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

WHEREFORE, Plaintiff, GREGORY ZAGORSKI, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. §227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. §227(b)(3)(B);
- c. Treble damages of \$1,500 per violative telephone call pursuant to 47 U.S.C. §227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. §227(b)(3);
- e. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, GREGORY ZAGORSKI, demands a jury trial in this case.

Respectfully submitted,

DATED: 3/5/2020

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